



Community Development

"Dedicated to Excellence in Public Service"

Adrian P. Freund, FAICP, Community Development Director
Nathan Edwards, Legal Counsel



Washoe County Board of Adjustment
Richard "R.J." Cieri, Chair
Philip J. Horan, Vice Chair

Mary S. Harcinske
Andrea Manor
Robert F. Wideman

WASHOE COUNTY BOARD OF ADJUSTMENT

MINUTES

March 4, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, March 4, 2009 at 1:30 p.m., in the Washoe County District Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

DETERMINATION OF QUORUM

Chair Cieri called the meeting to order at 1:35 p.m. The following members and staff were present:

Members present: Richard "R.J." Cieri, Chair
Mary S. Harcinske
Philip Horan
Andrea Manor
Robert F. Wideman

Members absent: None

Staff present: Adrian Freund, FAICP, Director, Community Development
Kimberly H. Robinson, Planning Manager, Community Development
Kelly Mullin, Planner, Community Development
Leo Vesely, P.E., Public Works Department, Engineering Division
Michael C. Widmer, Hydrogeologist, Department of Water Resources
Nathan Edwards, Deputy District Attorney
Cathi Moldenhauer, Recording Secretary, Community Development

PLEDGE OF ALLEGIANCE

Member Wideman led the pledge of allegiance to the flag.

APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Manor moved to approve the agenda of March 4, 2009. The motion, seconded by Member Harcinske, passed unanimously.

APPROVAL OF MINUTES

No minutes were available.

PUBLIC COMMENT

None

CHAIR AND BOARD ITEMS

- a. Report on Previous Board of Adjustment Actions

Ms. Robinson reported that Appeal Case No. AX09-001, which was granted by the Board of Adjustment on February 5, 2009, was appealed to the Board of County Commissioners and will be heard on March 24, 2009.

DIRECTOR'S ITEMS

None

CONSENT ITEMS

None

PROJECT REVIEW ITEMS**AGENDA ITEM 1**

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-023 (REDROCK VALLEY RANCH, LLC)(Continued from February 5, 2009 meeting) - To construct 16.5 miles of a water line up to 24" in diameter, a booster pump station, a 25,000-gallon surge suppression tank, up to three (3) well houses, and associated equipment for all facilities. Approximately 15.25 miles of the proposed water line is located within Washoe County's jurisdiction; the remaining 1.25 miles of pipeline would be located within City Limits of Reno. The Utility Services use type is authorized in Table 110.302.05.02 of the Washoe County Development Code. The proposed pipeline will originate at 15800 Dry Valley Road and will terminate at the north end of the Airport Authority property in Stead, within the City of Reno. The proposed route travels along portions of Dry Valley Road, Red Rock Road, and American Flats Road. The well houses are proposed to be located at 15800 Dry Valley Road. The booster pump station is proposed to be located at 14625 Red Rock Road. The surge suppression tank is proposed to be located on APN 079-381-21 on Red Rock Road, approximately 100 feet south of its intersection with Gorham Court. The proposed project is located in the North Valleys Area Plan, and is situated in portions of Sections 11-14, 23, 26, 35, T23N, R18E, Sections 1 and 2, T22N, R18E, Sections 6, 7, 18, 19, 20, 28-30, 32, T22N, R19E, Sections 5 and 6, T21N, R19E MDM, Washoe County, Nevada. The property is located in the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APNs 078-194-06, 078-091-01, 079-381-21, 078-131-05, 079-030-13, 078-124-01, 079-010-26, 079-332-23, 078-184-03)

Chair Cieri opened the public hearing.

Members Horan, Wideman, and Manor disclosed they toured the site individually and received numerous emails, correspondence and phone calls from opponents of the project.

Member Harcinske and Chair Cieri indicated they each received many pieces of correspondence in opposition to the project.

Kelly Mullin reviewed the staff report dated January 26, 2009. Staff received numerous letters of concern. It was contended that easements for Dry Valley Road were obtained unfairly, and, even though the project is under contract with the Truckee Meadows Water Authority (TMWA), the applicant could not use the public utility easement in place on Dry Valley Road. As a standard condition of approval, the applicant must provide evidence of the existence of appropriate easements to the County Engineer in order to construct the pipeline in areas outside the right-of-way. This proof must be provided prior to the issuance of a building permit. The objection most received from the residents of the Red Rock Valley was about exporting water from the Red Rock Valley hydrographic basin. While staff understands these concerns, Ms. Mullin emphasized that this review related to the construction of the physical facilities, i.e., the pipeline, the well houses, tank and the booster pump station. The question of whether the water can or should be pumped out of the Red Rock area lies within the jurisdiction of the State Engineer.

Ms. Mullin stated that Policy 16.3 of the North Valleys Area Plan required that all inter-basin transfer requests be protested by Washoe County. A protest was filed by the Department of Water Resources, but was subsequently withdrawn following additional study. A stipulation agreement was filed among the County, the State Engineer and the applicant.

Ms. Mullin advised that Condition 8.r., as presented in the staff report, should be revised to read: "Provide a detailed geotechnical analysis for installation of the waterline within any area designated as both potential flood hazard and potential wetlands on the North Valleys Suitability Map. This must also include the area of Red Rock Road that now contains active springs (see letter from Black Eagle Consulting dated August 3, 2007 Project No. 0191-11-2)." She also requested that Conditions 14 and 15 be added under the heading of Wetlands Conditions as follows:

Condition 14: "The following conditions are requirements of the Department of Community Development, and it shall be responsible for determining compliance with these conditions.

"a. Prior to the issuance of a building permit, the applicant shall provide evidence to the Department of Community Development that any construction in wetlands areas is consistent with Goal 18 of the North Valleys Area Plan.

"b. Prior to the issuance of a building permit, the applicant shall conduct a wetlands delineation study and obtain Army Corps of Engineers certification of any delineated wetlands for areas of the project designated potential wetlands on the North Valleys Development Suitability Map."

Under the heading of Nevada Department of Wildlife, Condition 15 should read: "The applicant shall utilize the best management practices (BMPs) listed in the memorandum from the Nevada Department of Wildlife (NDOW) dated March 2, 2009, as well as any technical note attached to that memorandum. A note detailing the BMPs shall be included on all construction drawings. Compliance with this condition shall be determined by NDOW. Prior to a final inspection, the applicant shall provide evidence from NDOW to the Department of Community Development that this condition has been met."

Staff recommended approval with conditions of the project.

Member Horan asked what the impact would be of receiving the geotechnical analysis required in Condition 8.r. Ms. Mullin deferred the question to the representative of the County Engineer, Leo Vesely.

Leo Vesely, Licensed Engineer, Department of Public Works, replied that the geotechnical investigation would provide evidence of springs, and design requirements would be established and incorporated into the final construction drawings. The typical recommendation would be that, on the upstream side of the road, a device such as an infiltration subdrain would intercept the springs, take the drainage across the road, and daylight it in a location where the spring currently drains. That would protect the pipe and the road. The study will provide information to the engineer who prepares plans for the system.

Member Harcinske asked if the study could reveal information that would prohibit the project from meeting Goal 18 in the Area Plan. Mr. Vesely explained that the condition was crafted to protect the County in the event the pipeline was constructed in a portion of the County road that has the springs. The study was definitely in the County's best interests.

Member Horan noted that the County would review the geotechnical study. Mr. Vesely stated the County would assure that the recommendations in that study were incorporated into the building permit drawings.

In response to Member Manor, Mr. Vesely stated that the naturally occurring springs near Red Rock Road tend to drain across the road and cause damage. The construction of the pipeline could worsen that condition.

Chair Cieri stated that TMWA had a contractual first right of refusal with the developer. He asked, if TMWA refused to purchase the project, would the enterprise then be privately owned. John Erwin, Director, Resource Planning and Development, Truckee Meadows Water Authority, replied that negotiations to acquire the well and water rights commenced in 2005. A contract was entered into in 2007 to augment water supplies to the Lemmon Valley area. The system would not be operated year round but probably from May through September. The contract conditions could not be met, because the contract called for 1,000 acre feet and the project would only produce approximately 850 acre feet. The contract was then converted to allowing TMWA the first right of refusal, an option that will expire the end of 2009. In his opinion, it was customary that facilities were built by private developers and then ultimately were dedicated to public utilities. To sell water, an entity must be under the jurisdiction of the Public Utilities Commission, thereby becoming a public utility, or the project must be dedicated to an existing public utility, such as TMWA or Washoe County.

Member Manor asked how many years Lemmon Valley has been experiencing water problems. Mr. Erwin stated the area's difficulties have been taking place since the mid-1970s.

Member Manor asked if TMWA would be more inclined to release the right of first refusal if the project could produce 1,273 acre feet. Mr. Erwin replied that more was not necessarily better unless there was a demand. Augmenting the water supply to Lemmon Valley would relieve the demand on the Truckee River and allow that water to be moved over to Spanish Springs. The maximum amount of water TMWA could use at this time was 1,000 acre feet.

Member Harcinske asked if there was anything to prevent individuals from tapping into the pipeline. Mr. Erwin responded that it was a transmission line, and TMWA would not want to tap into that line for a development.

Member Wideman stated that it was possible that TMWA would not purchase the pipeline. He questioned what would become of the project then. Mr. Erwin agreed, but he did not know what the developer would do with the pipeline.

Member Horan asked if there was an alternate purchaser. Mr. Erwin stated there could be a property holder near TMWA's service area, such as the Airport Authority, that might need a source of water.

Chair Cieri asked if the pump houses would be illuminated. Ms. Mullin indicated they would not be lighted, and noise would be minimal outside the structures.

Melissa Lindell, Wood Rodgers, LLC, 575 Double Eagle Court, representing the applicant, introduced Stacie Huggins, also of Wood Rodgers. She emphasized that the transfer of water was not a part of this project. She indicated that Condition 8.m. provided that the facility must be maintained by a public utility company. The right-of-way in Dry Valley Road was addressed in Condition 8.h., requiring the applicant to provide all the appropriate easements prior to construction. Any issues regarding those easements must be handled as a civil matter. The applicant's attorneys reviewed the applicable CC&Rs and believe that the pump house is an allowable public utility use. Any disagreement or challenge would also be a civil matter.

Stacie Huggins described the project in detail. She indicated that the applicants, she and Ms. Mullin attended several public meetings regarding this project. Most questions and concerns were in regard to noticing requirements and the water importation project. She stated that this utility service project was extensively reviewed; and, although the water importation was not a part of this project, it was approved by the State Engineer with concurrence by the Washoe County Department of Water Resources. The applicant agreed with the conditions of approval and believed the findings could be made to approve the special use permit. She then enumerated the reasons the project could meet the findings.

In reply to Chair Cieri, Kelvin Hickenbottom, P.E., Deputy State Engineer, 901 South Stewart Street, Suite 2002, Carson City, stated that this project was considered at an administrative meeting held in June, 2007. Residents were notified of the hearing through publication in a paper of local circulation for four consecutive weeks. A thirty-day protest period would then follow the last date of publication.

Member Manor asked if the State Engineer's office received any comments from the homeowners in the area. Mr. Hickenbottom did not attend the meeting, but he stated there were no formal presentations on behalf of members of the public. Numerous people protested the project, but he was not aware of anyone appearing at the hearing. Washoe County also protested the project, but subsequently stipulated with the applicant to withdraw its protest. Mr. Hickenbottom clarified that the State Engineer was not a party to the stipulation.

Member Wideman noted the monitoring and mitigation plan contained as a condition of approval of the permit by the State Engineer. He asked Mr. Hickenbottom to describe that plan. Mr. Hickenbottom stated that locations of monitoring wells, frequency of measurements, the procedures to be taken in the event impacts are observed, and mitigation measures such as

reduced pumpage must be provided to the State Engineer's office prior to pumping any water. This plan was not yet filed. Experts in hydrology at the State Engineer's office would review this plan. Member Wideman asked if those people who would be impacted by this project would have a voice in this mitigation plan. Mr. Hickenbottom replied they probably would not. The plan would become public record, and people could make comments. Member Wideman stated the people in the valley whose wells could be impacted should be involved in assuring the mitigation process would provide them some protection. Mr. Hickenbottom advised that the plan would be posted on their website. If one requested notification that the plan was submitted, the State Engineer's office would provide that notice.

Chair Cieri asked how many test wells would be put in an area this large. Mr. Hickenbottom was unable to answer, as he was not an expert in hydrology.

Member Harcinske asked Ms. Huggins what changes were made in the project as a result of discussions with the neighbors. Ms. Huggins advised that there were no changes to the special use permit, as there were no questions or concerns about that portion of the project. All questions and concerns were in regard to the water project and noticing associated with that.

Stephen Moss, Esq., Law Offices of Michael B. Springer, 9628 Prototype Court, representing the Sierra Ranchos Property Owners Association, stated that the applicant did not provide full disclosure to the public or the Board of Adjustment regarding this project. The applicant purported that the public utility easement down Dry Valley Road would be used to provide utilities to a new development on the 160 acres owned by RedRock Valley Ranch. Included in this development would be a park-like area containing a riding stable open to all the residents of the area. Nothing was mentioned about a 24-inch water transmission pipe that could ultimately affect the wells of the existing residents. Mr. Moss compared the proposed transmission line to the Vidler project, which was a 30-inch transmission line. He contended that construction of the pump house would not be a conforming use in the CC&Rs, in that they prohibit any commercial use of the lots. The use of Dry Valley Road and the public utility easement was also a matter of contention because the applicant was not a public utility. Mr. Moss was unable to ascertain that this project was submitted to the Nevada Public Utility Commission to date. Because the project would be detrimental to the community, Mr. Moss asked that the special use permit be denied. He anticipated this project would become the subject of a civil court trial.

Chair Cieri reminded Mr. Moss that the Board of Adjustment had no authority to make any determination regarding the CC&Rs.

In response to Chair Cieri, Mr. Moss advised that the report from the State Engineer allowed the exportation of 855 acre feet of water annually, and that amount could be increased to 1,273 acre feet. The applicant possessed substantially more water rights than the 1,273 acre feet.

[A recess was called at 3:20 p.m. The meeting reconvened at 3:32 p.m.]

Steve E. Wenzel, Esq., 301 Flint Street, representing Rancho Haven and Sierra Ranchos, and 181 individuals, stated that impacts in the Red Rock hydrographic basin, noting hundreds of acres of beautiful green fields that will be destroyed, have not been mitigated. He made reference to the fact that the County planned to oppose the project at the hearing before the State Engineer and then changed its mind the night before the hearing. Although scattered

opposition was presented at the hearing, no organized, effective opposition was presented. He was concerned that no mitigation plan was in place, and no public participation would be involved in formulating this plan.

Member Harcinske noted that the map of the North Valleys Area Plan designated the area in which the pipeline would run as being an area not needing service. Mr. Wenzel observed that the applicant was not concerned about to whom they would sell water, just the fact that water would be sold.

Member Wideman stated his understanding that the principal objection to the project was that the developer was not a public utility. He asked if a condition to require a contractual agreement with a public utility to exist would stop that objection. He added the further proposed condition that an agreement be reached with the homeowners association regarding the amount of water to be exported and containing mitigation measures to be taken in the event of well drawdown in the area. Mr. Wenzel stated those conditions would be favorably considered if they included the entire hydrographic basin and allowed the residents a meaningful role in drafting the mitigation measures and in monitoring the project. He emphasized that the area is at least fifty percent riparian, and that aspect has not been studied carefully. The area would be completely transformed if the large amount of water proposed was exported.

Chair Cieri asked why there was no public participation in the review before the State Water Board. Mr. Wenzel stated it was believed that Washoe County was prepared to make a presentation adverse to the project. Chair Cieri further asked if there was a contract between the developer and TMWA. Mr. Wenzel stated there was a right of first refusal option in existence but no formal contract. The amount of water authorized to be exported does not meet the requirements of the proposed TMWA contract. It is possible that Washoe County could negotiate a contract with the developer, but none has been initiated so far.

Peter Hackbusch, 16100 Frontier Road; David Gaskill, 15095 Red Rock Road; Jennifer Sisco, 200 Muletail Circle; Neal Cipriani, 14455 Red Rock Road; Loren Pierce, 300 Cinch Road; Joan M. Thorngate, 270 Cinch Road; Helen Mooney, 14240 Rancho Road; Mike Crosthwaite, 305 Saddle Road; Ruth Chaffee, 16200 Red Rock Road; Hank Konen, 270 Cinch Circle; Lynne Pieren, 14695 Red Rock Road; Michael Dikun, 13305 Red Rock Road; Steve McGuire, 200 Appaloosa Circle; Brandonne Boltz, 15775 Panhandle Road; S.A. Schwab, P.O. Box 60404, Reno; Heather Benjamin, 16150 Roundup Road; David Miller, 305 Rowel Circle; Paula Banks, 310 Cinch Road; Kathleen Bloom, 155 Horseshoe Circle; Kristene Biglieri, 1230 Freds Mountain; Marjorie Pickering, 110 Arabian Way; Sandra McGill, 19900 Fetlock Drive; Doran Simonson, 285 Appaloosa Circle; Sharon Kaempfer, 155 Horseshoe Circle, all spoke in opposition to the project. Concerns included the fact that the planners were not standing with the community to protect their properties, that the construction of the ancillary buildings is not within the proper setbacks, trespass on privately-owned Sierra Ranchos roadways, the location of the booster pump station, noise impacts, loss of property values, deepening of water levels in wells, loss of night skies, the inadequacies of the noticing process, threats to endangered species such as the Carson Wandering Skipper butterfly, the disregard for sustainable development, the alleged misrepresentations of the applicant, loss of rural residential lifestyle, the effects of noise on domestic animals, the number of water rights owned by the applicant, recharge of the aquifer, that grassland in the valley would turn to scrub brush, the reliability of the power sources in Red Rock Valley, and difficulty obtaining water for fire safety if the wells are depleted.

Bonnie McLaughlin, 16400 Roundup Road; Julie Garand, 16105 Frontier Road; Carol Hoefft, 165 Horseshoe Circle; Sherry Jeurissen, 22900 Fetlock Drive; Bonnie Runge, 10 Appaloosa Circle; Roger Seifert, 16250 Roundup Road; and John and Liz Howe, 11510 Osage Road, did not wish to speak, but did wish to be on the record as opposed to the project.

Chair Cieri asked Ms. McGill how she received notice of the hearing before the State Engineer. She replied it was through word of mouth from a neighbor. The hearing was noticed as a conversion of water rights from agricultural to municipal. She talked with Washoe County Department of Water Resources (DWR) and was advised to file a protest. Washoe County would also protest. The person she talked with at DWR was replaced prior to the time of the hearing, and the new person negotiated a settlement with the applicant the night before the hearing and withdrew Washoe County's protest. Plumas County also filed a protest, and they too did not show up. Because the individuals did not have a factual, technical presentation, only emotional, the State Engineer's office considered them to be "no shows."

Chair Cieri closed the public hearing.

Michael C. Widmer, Hydrogeologist, Washoe County Department of Water Resources, disagreed with testimony given by the public regarding the oversight of this project. He and two other hydrologists worked with the developer and the State Engineer to come to consensus regarding the water resources of the Red Rock Valley. He gave a synopsis of the past two years' events. A water resources investigation was initiated in 2003 as a part of the long-term hydrographic basin studies. Data was collected for five years to determine the resources in the valley and, consequently, to make future decisions based on growth in the valley. In 2006, developers filed applications for 5,549.28 acre feet of water. Estimates from the 1960s and 1970s indicated there were only 1,000 acre feet, so the DWR felt protests were very prudent. As a result of the protest, Red Rock Valley Farms met with the DWR over several meetings, and it was decided to jointly develop the data necessary to analyze the resources of the valley and present that data to the State Engineer, who would make a decision. During this process, Red Rock Valley Farms reduced its application to only 1,273 acre feet. A consensus was reached between consultants for the developer and DWR regarding an appropriate estimation within a particular range of the water resources of Red Rock Valley. The focus of the groundwater modeling was the east side of the valley. The 2007 resource estimate of the potential impact on the wells in the valley was twenty to thirty feet of draw down after twenty-five years of pumping at 1,273 acre feet. He parenthetically noted that the State Engineer reduced that amount to 855 acre feet, which represented sixty-seven percent of the pumping. That would reduce the draw down to approximately thirteen to twenty feet after twenty-five years of pumping. Those numbers were reasonable to DWR staff. Therefore, DWR withdrew its protest at the State Engineer's hearing. Basically, DWR agreed with the developer's assessment of the resources. At least a month prior to the hearing, a legal stipulation was submitted withdrawing the protest provided the developer abide by certain conditions. In Mr. Widmer's professional opinion, the State Engineer was extremely conservative with the analysis. As the developer originally requested 5,549 acre feet and it was reduced to 855 acre feet, DWR considered this a landmark decision. He disagreed with the opinion that Washoe County abandoned the people of Red Rock Valley at the last minute. The County is very limited in terms of State water law. The State Engineer, in a very prudent and appropriate decision, stated there was unappropriated water in that valley, and he made his decision accordingly. He arrived at 855 acre feet because the applicant already owned 484 acre feet of water rights, and the State only granted an additional 370 acre feet. Estimates are based on a high and low range, and the 1,273 acre feet represented the amount over and above what was appropriated and accounted for existing and

future domestic well owners based on vacant lots. He reiterated his professional opinion that the State Engineer was very conservative in granting the developer 370 acre feet above what was unappropriated.

Chair Cieri asked what would be the consequences in the event Mr. Widmer's projection was incorrect that wells would be affected by twenty-foot draw downs after twenty-five years of continuous pumping. Mr. Widmer explained there is a continuous program of monitoring water levels to gain a better understanding of how the aquifer reacts to years of drought and abundance. At some point, if and when the production wells commence exporting water, there will be a cause and effect described by the monitoring of what is occurring within the aquifer. Over time, predictions of long-term effects can be made with much more certainty. Monitoring data and pumping records are submitted to the State Engineer at least annually. He would make the decision based on that information to enact mitigation measures. He also has the authority to issue a cessation of pumping order. Chair Cieri asked what the effect would be on TMWA if the well was dry. Mr. Widmer stated test wells were drilled, and that was not a possibility. The issue was the long-term effect, and it was not possible to know with certainty until the well was constructed and pumped for a period of time. Chair Cieri stated that this was, therefore, all theory. Mr. Widmer disagreed.

Member Manor asked if RedRock Valley Ranch had the potential of having 5,000 acre feet of water rights on the land they own. Mr. Widmer stated, in his opinion, they did not.

Member Harcinske stated that, during public testimony, an individual said that green belts would turn to scrub. She asked if that was Mr. Widmer's understanding. He replied that the water levels would drop over time, and any plants subsisting off groundwater would die off. The only plants that would subsist would be those that survived on precipitation only. Some plants have tap roots that can go down forty feet.

Member Harcinske asked if climate change was factored into the recharge calculations. Mr. Widmer replied it was not.

Mr. Hickenbottom, in reply to Chair Cieri, explained that, in the event domestic wells needed to be deepened as a result of water being pumped from the valley, mitigation measures would be enforced to provide funds to deepen the wells or provide water service from the system. The applicant had 773 acre feet of water rights at the time of the application. The consumptive use of the alfalfa crops was sixty-two percent of the water; therefore, thirty-eight percent went back to recharge the basin. He described the calculations used to determine the number of acre feet available to the applicant. The applicant would have to provide detailed and costly studies in order to bring the number of acre feet up to the 1,273 acre feet requested. The State Engineer's office is required to strictly follow statutory guidelines. He pointed out that the applicant will stop irrigating the 160 acres they are currently farming, because that water will be pumped out.

Chair Cieri asked if the water would be metered. Mr. Hickenbottom stated the water pumped out of the valley would definitely be metered as a requirement of the permit.

[A recess was called at 5:27 p.m. The meeting reconvened at 5:40 p.m.]

Deputy District Attorney Edwards advised that NRS 278.270 grants the County the power to create a zoning board of adjustment. Washoe County Development Code Section

110.812.10.a is the ordinance that created this Board of Adjustment. Once created, NRS 278.300.1.d and NRS 278.315.1 give this board the power to grant special use permits. The latter section specifies that special use permits will be governed by ordinance. The ordinances governing special use permits are found in Article 810 of the Development Code. Section 110.810.30 sets forth the findings necessary to support the granting of a special use permit. The job of this Board is to decide this special use permit application by considering the findings in that Development Code section. This Board may consider any evidence heard or received today in this hearing relevant to those findings in making this decision. The Board is not required to approve or deny this special use permit because of the State Engineer's findings in its order. The case of *Serpa v. Washoe County, 111NV1081*, a 1995 case, the Nevada Supreme Court said that local governments can determine water availability decisions for themselves. Whether this Board approves or denies the application, however, what is most important is that the decision be impartial, be based on substantial evidence in the record, and be based on the findings found in Section 110.810.30 of the Development Code.

Member Wideman noted that the State Engineer believed, from a hydrological perspective, there was sufficient water to support this project. Apparently, the Washoe County Department of Water Resources was in concurrence with this opinion. The State Engineer's finding provided a condition for a mitigation plan. Member Wideman asked Ms. Mullin how we would know that condition was complied with prior to issuing a building permit. She deferred the question to Mr. Hickenbottom, but she assumed it would not occur until water was actually pumped, which would be after issuance of the building permit. She assured that the State Engineer's office would welcome comments from the public regarding the mitigation plan. Member Wideman asked if it was possible for this Board to impose a condition requiring the mitigation plan be in place prior to issuance of a building permit. Deputy District Attorney Edwards referred to Development Code Section 110.810.20.e, which provided that the Board of Adjustment may take action to approve, approve with conditions, modify, modify with conditions or deny a special use permit request. Member Wideman requested that staff craft such a condition, which would also be acceptable to the surrounding property owners.

Member Wideman further noted that, while a contract existed between the applicant and TMWA, TMWA could opt out of the contract. He requested an additional condition requiring that the contract be completed prior to issuance of a building permit. This would solidify the fact that the applicant was acting as an agent of a public utility.

Member Wideman asked staff's opinion as to how the finding regarding detriment to the public and surrounding properties was met. Ms. Mullin listed the following reasons: based on the fact that the State Engineer ruled that 855 acre feet, and potentially 1,273 acre feet, could be removed from the basin without significant detrimental effects on the surrounding area; the fact that the Department of Water Resources withdrew its protest based on information received, and the fact the special use permit was for building the infrastructure and the impacts of putting in physical facilities.

Chair Cieri asked why the pump houses could be built without the approval of the homeowners association. Ms. Mullin explained the process used by the Department of Building and Safety when an applicant files for a building permit and there is an architectural review committee registered with the department for the location. The applicant may provide a letter from that committee stating the plans have been approved, or a waiting period ensues where the department notifies the committee of what is proposed.

Director Freund emphasized that the County does not administer nor oversee private restrictions or CC&Rs.

Member Harcinske stated she felt the project was premature, in that much of the information provided was speculative. Although work and investigation was ongoing for about four years, the only meetings with neighbors commenced in January 2009. She was concerned that she could not make the findings required. She was also concerned that the pipeline would run through areas that were not designated in the area plan for development. Nothing would prevent developers from tapping into the pipeline and proceeding with intense development in those areas. She noted that the County stated it did not anticipate providing water service to neighboring properties; however, the mitigation measures referred to hooking the neighbors up to community services. For those reasons, she felt the project would be detrimental to the surrounding area.

Member Horan agreed that the project would be detrimental to the neighbors.

Chair Cieri requested that the condition requiring mitigation measures include a provision that, should there occur a water shortage in the valley, the homeowners could connect to the water system at a reasonable price.

Deputy District Attorney Edwards advised that the Development Code provided the Board of Adjustment with the ability to revoke the special use permit, thereby causing cessation of pumping. There could be takings problems with requiring the developer to allow persons to tie into the pipeline and specify the rate. Setting rates is under the jurisdiction of the Public Utilities Commission.

Discussion ensued regarding the difference between denial with or without prejudice.

Member Harcinske stated that she would like to give the applicant the opportunity to work more closely with the community, and she would therefore move to deny without prejudice.

Member Harcinske moved to deny without prejudice Special Use Permit Case No. SB08-023, based upon her inability to make Finding No. 4, "Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area." The motion was seconded by Member Manor and passed unanimously.

[Ms. Robinson recited the process to appeal this decision.]

OTHER ITEMS

None

ADJOURNMENT

There being no further business to come before the Board of Adjustment, the meeting adjourned at 6:08 p.m.

Respectfully submitted,

Cathi Moldenhauer, Recording Secretary

Approved by Board in session on June 4, 2009

Adrian P. Freund, FAICP, Director
Secretary to the Board of Adjustment